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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,621	02/06/2004	Harvey Jay	J07-013	8355

7590 01/12/2006
R. Neil Sudol
714 Colorado Avenue
Bridgeport, CT 06605-1601

EXAMINER

JOHNSON III, HENRY M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/773,621	JAY, HARVEY	
	Examiner	Art Unit	
	Henry M. Johnson, III	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29 is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☒ Claim(s) 28 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>051004 061404</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: On page 23, line 22, the word melanin is misspelled.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Line four has an extra word making the exact meaning unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 9-12 17 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,606,798 to Kelman. Kelman teaches a laser hair cutting apparatus within a hand-held housing, the housing including the laser, power supply (control), a vacuum source and a mirror that is positioned to direct the laser energy substantially parallel to the surface of the skin (abstract). Kelman discloses a preferred wavelength of 800 nanometers as that is absorbed by the hair, but not by surrounding tissue. An absorber is included (Fig. 2A, # 30) to

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prevent spurious radiation from leaving the housing (shielding). The inside of the housing is interpreted as a light application chamber. The method steps are turning on the device (generating radiation), which must be done to use the device and directing the energy in a specific direction, which is inherent in the design.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6, 13-15, 18-21 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,606,798 to Kelman as applied to claim 1 above, and further in view of U.S. Patent 6,280,438 to Eckhouse et al. Kelman is discussed above, but does not disclose specific parameters for hair treatment. Eckhouse et al. teach an apparatus and methods for electromagnetic skin treatment, including the removal of hair. Devices include pulsed light sources such as flashlamps (incoherent) for providing electromagnetic treatment of the skin, including hair removal (abstract). The flashlamp is disclosed as having a wavelength range from 200 to 1300 nanometers, however the preferred range is 550 to 1300 nanometers (col. 6, lines 5-7). The pulses are controlled by varying the pulse width and pulse intervals (Col. 22, lines 30-35), thus indicating multiple pulses (bursts). A 50 ms pulse width is disclosed. The fluence delivered is disclosed as from 10 to 100 J/cm² (Col. 5, line 28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the pulse parameters as taught by Eckhouse et al. in the invention of Kelman to treat the hair in the

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chamber of Kelman. Information regarding absorption of various wavelengths by skin type and hair colors is well known in the art as substantiated by the other citations included herein.

Regarding claims 13-15, Eckhouse et al. discloses multiple pulses and a control unit that may be a microprocessor (Col. 19, line 9). Such control provides the capability to vary pulses to alter the parameters of the pulses to sever or weaken the hairs as desired. Lacking any specific parameters associated with severing or weakening, Eckhouse et al. is interpreted as having that capability.

Regarding claims 18-21 and 24-26, no further action steps for a method are claimed. Additional limitations to the apparatus have been discussed.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,606,798 to Kelman as applied to claim 1 above, and further in view of U.S. Patent 6,306,160 to Nidetzky. Kelman is discussed above, but does not teach a contact sensor. Kelman discloses a contact ring sensor that inhibits operation of a laser without proper contact (Col. 1, lines 45-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the contact sensor as disclosed by Nidetzky in the device of Kelman as a safety feature to reduce the possibility of stray radiation.

Claims 16 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,606,798 to Kelman as applied to claim 1 above, and further in view of U.S. Patent Application Publication US 2003/0167033 to Chen et al. Kelman is discussed above, but does not teach a reservoir associated with the device. Chen et al. teach a system for photodynamic therapy that includes a reservoir for dispensing a photoreactive agent (par 0068). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the reservoir as taught by Chen et al. in the invention of Kelman as the use of photosensitizers

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is common for many light treatment methodologies and therefore inclusion of such a capability would be obvious. Having such capability would imply a step of dispensing from the reservoir.

Allowable Subject Matter

Claim 29 is allowed.

Claims 28 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

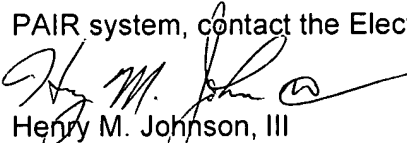
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Application Publication US 2004/0230260 to MacFarland et al teaches a capacitance skin contact sensor. U.S. Patent 6,162,211 to Tankovich et al. discloses absorption characteristics of hair and tissue based on pigmentation, penetration depth, wavelength and fluence of the radiation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Henry M. Johnson, III
Patent Examiner
Art Unit 3739